IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1277 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAYUDDIN ALLAUDDIN MALEK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1277 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/06/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner detenu has

challenged his detention order dated 22.12.2002 by which the petitioner is detained as "bootlegger". Along with the detention order, he was served with the grounds of detention which are of the same date. In the grounds, there is a reference about one criminal case, which is filed against the petitioner under the Bombay Prohibition Act. The aforesaid detention order is challenged by the petitioner on various grounds.

#. At the time of hearing of this petition, it is submitted by the learned advocate for the petitioner that the statements of all the witnesses recorded by the police under Section 161 of the Code of Criminal Procedure, 1973 ("the Code" for short) were not placed before the detaining authority, and, even though, the petitioner demanded the statements recorded by the police under Section 161 of the Code, such statements were also not given to the petitioner. To substantiate his say, the learned advocate for the petitioner relied upon decision of this Court in the case of Jahid Habibbhai Shipai Vs. State of Gujarat and others, reported in 2001(3) GLR 1957. In para 12, this Court observed as under.:

"Now, here, I may consider ancillary point which arises for consideration. In the cases where chargesheet have been submitted against the detenu in criminal Court, it is true that the copies of the statements of witnesses recorded under Sec.161 of Cr.P.C. would have been furnished to him, but only on this ground, this right of the petitioner to claim copies of these documents from the detaining authority cannot be denied. If such a course is adopted, there may be manifold difficulties in the way of the detenu to collect all these documents because in our system, those papers would have been with the Advocate engaged by the detenu and to take those documents from the Advocate would have been a time-consuming factor. There is yet another patent difficulty with the detenu if this course is made applicable in his case. Firstly, he is in jail and it is difficult for him to collect this material from his Advocate. Secondly, when he approaches the Advocate, he may have pretext here and there not to give those documents so that the detenu has to come to the compromise and engage him for filing representation in detention matter. I have seen cases after cases wherein the detenus have filed their representations against the detention order through the

Advocates. To make representation against detention order, the detenu may not need the assistance of an Advocate. However, in substantial number of cases, I have seen that representation against detention order are being made either by the detenu himself or through his relations. The detention order results in deprival of, may be temporarily, liberty to the detenu, where the authority decides to detain him for his activities, certainly he can legitimately make demand for supplying him copies of all vital and the relevant documents. The detaining authority is under a legal obligation to supply the copies of all those documents which are vital and relevant to make an effective representation against the detention by the detenu. Relevance and vitality of a document to certain extent has to be decided by the detenu and not by the detaining authority. However, where documents demanded are wholly irrelevant or unconcerned to the matter, then in that case, the detaining authority may be justified to decline this request of the detenu. In such case, where the request is made for supply of copies of the documents by the detenu and the detaining authority considers that copies of those documents cannot be given to him, a reasoned order is expected from it, that is to day, to give reasons in support of that order. This reasoned order will serve twofold purposes. If the detenu is satisfied with the reasons given, he may not pursue the matter further, and as a result of which, it will save him from expenses of litigation as well as the State Government. Secondly, where the matter is taken up before this Court, the Court will be in a better position to appreciate the matter and in many cases may not call the respondent with the record or reply. To sum up, it is made clear that the detenu is entitled for copies of the statements of witnesses recorded under Sec. 161 of Cr.P.C. in criminal cases which are taken into consideration by the detaining authority to detain him under the Act, irrespective of the fact, whether those statements are part of the material which has been placed before the authority for consideration and passing of the order of his detention. Secondly, copies of the statements recorded under Sec.161 of Cr.P.C. in criminal cases which are made use of for detention of the detenu under the Act even if in

those cases, charge-sheet is submitted in the Court, the detenu has all the right to claim copies thereof from the detaining authority. Thirdly, where the detaining authority is not inclined to give copies of those documents (statements recorded under Sec.161 of Cr.P.C.) it has to record reasons in support of its decision."

The State Government has also filed an affidavit-in-reply. In para 4 of the affidavit-in-reply, the State has stated that the Police Commissioner, Ahmedabad City is instructed to provide the copies of the demanded documents. In spite of this reply of the State, it is not in dispute that such documents are not provided to the petitioner till today. Once the State has filed an affidavit-in-reply directing the Police Commissioner to supply all those documents which are demanded by the petitioner, the Commissioner is bound to supply the same.

#. Considering the said aspect of the matter and considering the decision of this Court referred to above as well as considering the fact that all the relevant documents were not placed before the detaining authority, i.e. statements of all witnesses recorded under Section 161 of the Code, it can be presumed that subjective satisfaction of the detaining authority is vitiated. On the aforesaid ground, the petition is allowed. The order of detention dated 22.12.2002 is quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with in any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)